IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 23784 of 2004(F)

PETITIONER:

C.M.MATHAI, CHAKKITUKUDIYIL HOUSE,
KALLOORKKAD P.O. MUVATTUPUZHA.

BY ADV. SRI.THAMPAN THOMAS
SRI.PRAMOD JOHN

RESPONDENTS:
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1. STATE OF KERALA,R EP. BY CHIEF
SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY, DEPARTMENT OF
CO-OPERATION, SECRETARIAT, TRIVNDRUM.

3. THE KERALA STATE CO-OPERATIVE EMPLOYEE'S
PENSION BOARD, REP. BY ITS SECRETARY, T.C.27/156,
157 CHINMAYA LANE, THIRUVANANTHAPURAM.

BY ADV. SRI.V.G.ARUN
SRI. T.R. HARIKUMAR
BY SENIOR GOVERNMENT SHRI P.K. RAVIKRISHNAN, R1 & 2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 23784 OF 2004

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Dated this the 13th day of March, 2007

J U D G M E N T

Petitioner, who was the Managing Director of Kalloorkad Farmers Co-operative Bank (for short "the Bank"), has filed this Writ Petition to quash Exhibit P5 Notification, Exhibits P7 and P8 orders and also for a direction to the respondents to pay an amount of Rs.66,096/- with interest towards pension arrears and to further direct the respondents to calculate pension of the petitioner including the dearness allowance. Petitioner retired from service on 31.3.1997.

2. The following are the material averments in the Writ Petition. There is discrimination between the persons who retired prior to 31.3.2000 and those who retired after the said date in the matter of calculating pension. The Government had introduced a Self Financing Pension Scheme for the retired employees of the Co-operative Societies under Exhibit P1 Notification dated 14.3.1995 and constituted a Board. As per

the Scheme pension is to be paid using the provident fund contribution made by the employees. The average pension payable to an employee is to be calculated commuting the basic pay and dearness allowance. Provident Fund is collected for both components. In the case of certain employees like the petitioner, dearness allowance was not included and hence he filed Exhibit P2 representation. On 7.3.2001 first respondent issued Exhibit P3 Notification amending the Scheme but pension of the petitioner was calculated without considering the entitlement of the petitioner. Petitioner filed Exhibit P4 representation. Thereafter the first respondent issued Exhibit P5 Notification giving effect to Exhibit P3 Notification only from 1.4.2000. In Exhibit P5 the benefits given as per Exhibit P4 were denied to the employees who had retired between 3.6.1993 and 31.3.1998. The pension payable to employees who retired after 1998 is calculated in accordance with Exhibit P3 Government Order whereas in the case of employees who retired prior to that date dearness allowance will not be taken into account. According to the petitioner on account of the non-inclusion of

dearness allowance from 1993 to 1998 he had sustained a loss of Rs.66,096/-. The petitioner filed a complaint before the Lok Ayukta. Lok Ayukta directed the first respondent to consider the request of the petitioner and pass orders. But the first respondent passed an order on 17.10.2003 rejecting the claim of the petitioner as per Exhibit P7 order. He filed another complaint before the Lok Ayukta which was dismissed in limine by the Lok Ayukta on 4.5.2004. Hence this Writ Petition to quash Exhibit P5 Notification as also Exhibits P7 letter and P8 order passed by the Lok Ayukta.

3. Second respondent has filed a counter affidavit contending that the Government had issued Notification in the year 1995 for payment of pension to the employees of primary co-operative Societies coming under the administration and control of the Registrar of Co-operative Societies and which are not covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. It is contended that pension rules were amended with effect from 2.11.2001 so as to enable those who retired between 3.6.1993 and 31.3.1998 with

monetary benefits from 1.4.2000. It is contended that as per that order, pension of the petitioner was revised from Rs.2,955/- to Rs.4,791/-. It is further contended that he is receiving the arrears of pension with effect from 1.4.2000 without remitting any additional pension contribution prior to that date. It is contended that pension rules were amended so as to make structural changes in the pension rules and as per the amendment, pension is 50% of the total salary. Salary includes basic pay and dearness allowance. It is contended that for getting pension with effect from 1.4.1998 the employer is required to remit additional pension contribution. But for getting arrears of pension with effect from 1.4.2000, the employer need not remit any additional contribution. It is contended that if the request of the petitioner is allowed, pension board will sustain huge loss which will affect the viability of the pension scheme itself.

4. Third respondent has filed a separate counter affidavit contending that the petitioner was receiving superannuation pension from the pension board with effect from

31.3.1997. It is contended that pension scheme was amended so as to revise pension of those who have retired between 3.6.1993 and 31.3.1998 and receiving pension. But they will get monetary benefits only from 1.4.2000. It is contended that the Pension Scheme is a self Financing one and the Notification issued is not having any retrospective operation. It is contended that petitioner's pension was revised as per the above provision and he has received arrears of pension with effect from 1.4.2000 without remitting additional contribution. It is further contended that for getting arrears of pension with effect from 1.4.1998 the employer is required to remit additional pension contribution. But for getting arrears of pension as per Exhibit P5 order, the employer need not remit any additional contribution. It is also contended that if the request of the petitioner is allowed, the pension board will sustain huge loss and it will affect the viability of the scheme itself.

5. The petitioner was working as the Managing Director of the Bank and he retired from service on 3.1.3.1997. Government had introduced a Self Financing Pension Scheme to

the employees of the primary Co-operative Societies who were working under the administration and control of the Registrar of Co-operative Societies which are not covered under the provisions of the PF Act. Exhibit P1 is the copy of the Scheme which came into existence with effect from 3.6.1993. The Scheme is called as the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994. A reading of the same shows that a Pension Fund is established for payment of pension to the employees of Co-operative Societies. The Societies were directed to deduct 10% of the basic pay of all its employees and credit the same to the Fund as monthly contribution. Clause 18 provides that if a person covered by the Contributory Provident Fund Scheme choses to become member of the Scheme, he shall refund the employer's contribution in the Contributory Provident Fund together with interest thereon to the Pension Fund. Then only he will be admitted to the present Scheme.

6. Pension is calculated considering the length of service, qualifying service multiplied by the average pay divided by 60. In

the Scheme the word 'pay' is defined in clause 2(1)(g). It reads as follows:

> "(g) "pay" includes.-
>
> (i) basic pay;
> (ii) special pay;
> (iii) Persons pay; and
> (iv) any other amount ordered to be treated as pay for the purpose of pension under this Scheme".

Originally dearness allowance was not included in the definition of pay. So for those employees the average basic pay was calculated and in addition to that 50% was added to the pension. Petitioner filed Exhibit P2 representation on 29.9.2000. Government issued Exhibit P3 Notification on 7.3.2001 with retrospective effect from 1.4.1998. Clause 2(1)(g) was amended and dearness allowance was also included in the pay on account of the fact that dearness allowance was merged in the pay. Thereafter Government issued Exhibit P5 Notification, amending clause 22 of the Scheme introducing a proviso. As per the proviso, in the case of employees who have retired from service between 3.6.1993 and 31.3.1998 the amount of pension shall be

determined with effect from 1.4.2000 taking into account the pay including dearness allowance and no dearness relief thereafter shall be paid.

7. Specific case put forward by the petitioner is that by giving monetary benefits to those persons who had retired between 3.6.1993 and 31.3.1998 Government is discriminating those persons who had retired after 1.4.1998. It is true that there is such a classification. But it is to be noted that pension Scheme introduced to the employees of Co-operative Societies is a Self Financing Scheme. Necessary funds for the payment of pension is to be collected by contribution. It is contended by the contesting respondents that no portion of dearness allowance was deducted from those who retired prior to 31.3.1998 whereas such amounts were contributed in respect of employees who had retired after that date. The petitioner is claiming monetary benefits without making any contribution. It is against the very spirit of the Scheme.

8. The case of the petitioner is that while a person who had retired prior to 31.3.1998 is drawing a pension of Rs.2,955/-,

those persons who had retired after 1998 will get Rs.6,000/- or more as pension. It is inevitable because at the time of revision of pay, a portion of the dearness allowance was added to the basic pay which resulted an increase in the basic pay. The persons who retired prior to 31.3.1998 is getting enhanced pension without making contribution. Further, contribution deducted from their pay was also less than the contribution deducted from the pay of persons who retired after 31.3.1998. So an employee who retired prior to 31.3.1998 will not get the same amount as pension than a similarly placed employee who retired after that date. It is to be noted that petitioner's case is not an isolated one. There are a large number of similarly placed employees like the petitioner, who are also to be paid revised pension in case the request of the petitioner is allowed. If such a direction is issued, it will affect the viability of the Scheme itself. So even accepting the contention of the petitioner that there is classification, the same is reasonable. Petitioner is not discriminated against any similarly placed persons. So the request of the petitioner to issue a direction to the respondents to

revise his pension by adding the dearness allowance also to his salary cannot be allowed. In the circumstances, the Writ Petition is only to be dismissed.

Writ Petition is accordingly dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.

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O R D E R

4TH JANUARY, 2007